UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
	)	No. 1:18-cr-191-02
-v-	)	
	)	Honorable Paul L. Maloney
HARVEY LONTEL HARRIS, Defendant.	)	

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO SUPPRESS STATEMENTS

Defendant Harvey Harris filed a motion to suppress statements and all evidence derived from those statements as fruit of the poisonous tree. (ECF No. 47.) The Government filed a response. (ECF No. 56.) Defendant filed reply. (ECF No. 57.) The Court held a hearing. (ECF No. 58.) The Government filed a supplement. (ECF No. 59.) Defendant also filed a supplement. (ECF No. 60.)

Defendant made multiple statements after he was taken into custody and read his *Miranda* rights. In an abundance of caution, the Government chooses not to litigate whether Defendant's conditional statement—"if I'm under arrest"—was an ambiguous request for counsel. Government asserts it will not seek to admit any of Defendant's statements as part of its case in chief against him. The Government, however, asserts that some of the other evidence Defendant seeks to suppress is not fruit of the poisonous tree, specifically two cell phones. The Court agrees.

A. Custodial Statements

Because the Government agrees not to use Defendant's statements in its case in chief, the Court need not discuss the relevant law regarding interrogations following the invocation of counsel. The Court need not resolve whether Defendant clearly and unambiguously invoked his right to counsel. And, the Court need not resolve whether Defendant made voluntary statements to officers after invoking his right to counsel.

B. Contents of Phones

Defendant insists that two cell phones, and the information on them, are fruit of the poisonous tree and must be suppressed.

As background, the Government obtained a search warrant for a package addressed to Patrick Lewis.[1] The package was seized before it was delivered, the package was opened, and the officers found over 300 grams of methamphetamine. The package was closed and delivered to the address, a two-story house which had been converted to separate apartments upstairs and downstairs. On this record, the Court assumes the mailing address did not distinguish between the upper and lower apartments. Defendant was on the porch and spoke with the carrier, who left the package with Defendant. Defendant then went upstairs with the package.

Agents appeared and secured the upstairs dwelling. Defendant was detained in one of the vehicles during this time. Before he was placed in the vehicle, the officers patted

[1] The Court relies on the Government's version of events, as described in its briefs, for the time before Defendant is taken into custody and for what the officers are doing while Defendant is in custody. Video and audio from the police car provides evidence of the conversations with Defendant after he is taken into custody. Generally, Defendant does not challenge the facts set forth in the Government's brief.

Defendant down and secured an iPhone from his pocket. The officers subsequently obtained the search warrant, which authorized a search of the entire second floor apartment.[2] The warrant authorized the officers to seize, among other things, "[a]ny data stored or contained on cellular phones or computers." (ECF No. 59-1 Warrant PageID.237.) A ZTE phone was located in the apartment. The iPhone found in Defendant's pocket was not his phone; the ZTE phone found in the apartment was Defendant's phone. Defendant did not actually reside in the upstairs apartment.

When police actions violate our constitutional rights, courts will exclude evidence that is the "fruit of unlawful police conduct." *Nix v. Williams*, 467 U.S. 431, 442 (1984). The exclusionary rule applies to the primary evidence collected as the direct result of an illegal search or seizure and evidence later obtained that was derivative of the illegal conduct, the fruit of the poisonous tree. *Utah v. Strieff*, 136 S. Ct. 2056, 2061 (2016) (quoting *Segura v. United States*, 486 U.S. 796, 804 (1984)). One exception to the exclusionary rule is the inevitable discovery doctrine. *Strieff*, 136 S. Ct. at 2061; *Nix*, 467 U.S. at 444. The government must show by a preponderance of the evidence that the information or evidence "ultimately or inevitably would have been discovered by lawful means." *Nix*, 467 U.S. at 444; *see United States v. Kennedy*, 61 F.3d 494, 497 (6th Cir. 1995).

Defendant argues that the cell phones and the data on the cell phones must be suppressed. Defendant reasons that he conversed with the officers about the cell phones

[2] The record does not establish when the Government sought or received the search warrant. The warrant contains no indication of time, only a date. At 13:56 on the video from the car, the officer talking to Defendant states that if they cannot get consent, they will have to go get a search warrant.

after he was given *Miranda* warnings and after he asked for an attorney. Defendant further asserts that officers sought the search warrant for the upstairs apartment, not the downstairs apartment, only because of their conversation with him.

On the record before this Court, the seizure of the cell phones falls within the inevitable discovery doctrine. Defendant does not assert that his custodial seizure was improper or otherwise illegal. The iPhone was discovered in Defendant's pocket during the pat-down. The phone was seized after Defendant was in custody and before Defendant made any statements to officers. The iPhone was lawfully seized.

Defendant cannot challenge the search warrant for the upstairs apartment, where his ZTE phone was located. Defendant did not reside at the upstairs apartment and has no standing to object to the search warrant, the search of the apartment, or the seizure of items in the apartment as permitted by the warrant. To have standing to challenge a search or seizure, the moving party must prove his or her own rights were violated by the challenged search or seizure. *Minnesota v. Carter*, 525 U.S. 83, 88 (1998); *Rakas v. Illinois*, 439 U.S. 128, 132 n.1 (1978).

The search warrant was lawfully executed and would have resulted in lawful seizure of Defendant's ZTE phone. The officers apparently retrieved the ZTE phone from the apartment before obtaining the search warrant. The officers and Defendant used the phone to try to find Defendant's step-father, the person Defendant identified as living in the upstairs apartment. Assuming, for the sake of argument only, that the conversation that resulted in the retrieval and use of the phone was the result of custodial statements made after Defendant invoked his right to counsel, and assuming that the custodial statements could not be

admitted into evidence, the phone and its data was still subject to the inevitable discovery doctrine. *See, e.g., United States v. Darden*, 353 F. Supp. 3d 697, 717-21 (M.D. Tenn. 2018) (involving the legal seizure of cell phones under the plain-view doctrine, a suppressable statement by the defendant he owned one of the cell phones, and the conclusion that the seizure and ownership of the phone were both subject to the inevitable discovery doctrine). Because the cell phone would be seized inevitably and lawfully, Defendant's ownership of the phone would also have been inevitably and lawfully determined.

Finally, the Court finds no basis for Defendant's speculation that the warrant to search the upstairs apartment was sought on the basis of Defendant's custodial statements. The officers knew that the package contained controlled substances. Defendant took the package upstairs. And, the affidavit submitted for the search warrant does not make any reference to any statement made by Defendant.

C.

Defendant has not demonstrated that either cell phone or the data on the cell phone should be suppressed. The iPhone was properly seized. The ZTE phone would have inevitably been seized when the officers obtained the search warrant.

Accordingly, Defendant's motion to suppress (ECF No. 47) is **GRANTED IN PART and DENIED IN PART.** Defendant's statements made while in custody and after he was read his *Miranda* rights will not be admitted as part of the Government's case against Defendant. The two cell phones seized and the data on those cell phones will not be suppressed

IT IS SO ORDERED.

Date: May 16, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge